

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ALFRED R. ANDERSON and U.S. POSTAL SERVICE,  
WILLOW PLACE STATION, Houston, TX

*Docket No. 03-721; Submitted on the Record;  
Issued May 8, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant sustained an injury in the performance of duty on January 31, 2002.

On January 31, 2002 appellant, then a 55-year-old letter carrier, filed a claim for a traumatic injury sustained that date to his upper and lower back by lifting flats and trays. The employing establishment controverted appellant's claim for continuation of pay on the basis that he sustained an occupational disease rather than a traumatic injury.

By letters dated May 16, 2002, the Office of Workers' Compensation Programs advised appellant that it needed further factual information, including a detailed description of how the injury occurred and a medical report, including a physician's opinion, as to how the reported work incident caused or aggravated the claimed injury.

Appellant submitted a report dated May 13, 2002 from Dr. J. Anthony Walter, a Board-certified orthopedic surgeon, who stated that he first saw appellant on that date "for low back and neck pain after sustaining an injury at work on January 31, 2002 while lifting heavy mail." Appellant complained of fairly constant low back pain associated with pain in both legs, tingling in both feet, neck pain, pain in the left arm and numbness, tingling and weakness in both arms. Physical examination revealed painful decreased neck motion, mild muscle spasms, restricted lumbar motion, positive straight leg raises and normal reflexes. X-rays showed mild degenerative disc disease at C5-6 and no bony abnormalities of the lumbosacral spine. Dr. Walter diagnosed acute lumbar and cervical strain, placed appellant on daily therapy to the neck and stated that appellant was "to return to this office for a follow[-]up visit in one week may work regular duty at this time."

In a response dated May 30, 2002, to the Office's May 16, 2002 inquiry, appellant further described the January 31, 2002 injury, results of an electromyogram and nerve conduction studies of June 4, 2002 and a June 11, 2002 note from Dr. Walter. This evidence was received by the Office on June 17, 2002.

By decision dated June 17, 2002, the Office found:

“The initial evidence of file was insufficient to establish that you experienced the claimed accident, in the time, place and in the manner alleged. Therefore, an injury within the meaning of the Federal Employees’ Compensation Act was not demonstrated.

“You were advised of this by letters dating May 16, 2002 and afforded the opportunity to provide supportive evidence.

“Evidence received consisted of [F]orm CA-1 and a medical report from Dr. Walter, M.D. dated May 13, 2002. This was [in]sufficient because you did not respond to our letters dating May 16, 2002 nor did you submit medical evidence to support your injury.”

The Board finds that the case is not in posture for a decision.

The Act provides that the Office shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as the Office considers necessary with respect to the claim. Since the Board’s jurisdiction of a case is limited to reviewing that evidence, which was before the Office at the time of its final decision, it is necessary that the Office review all evidence submitted by a claimant and received by the Office prior to issuance of its final decision. As the Board’s decisions are final as to the subject matter appealed, it is critical that all evidence relevant to that subject matter which was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office.<sup>1</sup>

In the present case, the Office received additional medical evidence and appellant’s May 30, 2002 response to its request for further information on June 17, 2002, the same day it issued its decision denying his claim. The Office’s June 17, 2002 decision found that appellant had not responded to its request for further information and had not submitted additional medical evidence. As evidence received by the Office the date of its decision was not reviewed for that decision, the case will be remanded to the Office for a proper review of the evidence and an appropriate final decision on appellant’s claim for an injury on January 31, 2002.<sup>2</sup>

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<sup>1</sup> *William A. Couch*, 41 ECAB 548 (1990).

<sup>2</sup> *Linda Johnson*, 45 ECAB 439 (1994); *Patsy R. Tatum*, 44 ECAB 490 (1993).

The June 17, 2002 decision of the Office of Workers' Compensation Programs is hereby set aside and the case remanded to the Office for action consistent with this decision of the Board.

Dated, Washington, DC  
May 8, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member